Journal of Dispute Resolution

Volume 1985 | Issue Article 6

1985

Mediator Expectations and Professional Training: Implications for Teaching Dispute Resolution

Raymond Albert

MEDIATOR EXPECTATIONS AND PROFESSIONAL TRAINING: IMPLICATIONS FOR TEACHING DISPUTE RESOLUTION

RAYMOND ALBERT*

I. INTRODUCTION

The current argument for reliance on informal dispute resolution processes, such as mediation, stems from a recognition of formal adjudication's shortcomings: high cost, delay, overly-complex procedures, the court's tendency to frustrate the parties' problem-solving efforts, and its failure to resolve the problem underlying the legal conflict, to name a few.[1] Put simply, courts are increasingly perceived as a less-than-ideal conflict resolution option, perhaps especially for the types of everyday disputes faced by many poor individuals. [2] Mediation, which uses a non-coercive third party whose role is to help the parties construct a mutually agreeable settlement,[3] has emerged as one response to the perception of institutional incompetency. It seems likely to evolve into a preferred option.[4]

Given this trend towards informality, it is appropriate to focus on one of the key actors in the alternative dispute resolution drama—the media-

---

* Assistant Professor, Law and Social Policy Program, Bryn Mawr College Graduate School of Social Work and Social Research; B.S., Univ. of Pennsylvania, 1974; J.D., Univ. of Connecticut, 1980; M.S.W., Univ. of Connecticut, 1980.

1. *See, e.g.*, Abel, *The Contradictions of Informal Justice*, in THE POLITICS OF INFORMAL JUSTICE 267-310 (R. Abel ed. 1982); McCaulay & Walster, *Legal Structure and Restoring Equity*, in LAW, JUSTICE AND THE INDIVIDUAL IN SOCIETY 269 (J. Tapp & F. Levine eds. 1977); Note, *Compulsory Judicial Arbitration in California: Reducing the Delay and Expense of Resolving Uncomplicated Civil Disputes*, 29 HASTINGS L.J. 475 (1978).

2. *See, e.g.*, Abel, *supra* note 1; Hofrichter, *Neighborhood Justice and the Social Control Problem of American Capitalism: A Perspective*, in THE POLITICS OF INFORMAL JUSTICE 207-48 (R. Abel ed. 1982); Cappeletti & Garth, *Access to Justice: The Newest Wave in a Worldwide Movement To Make Rights Effective*, 27 BUFFALO L. REV. 181 (1978).

3. *See* P. GULLIVER, DISPUTES AND NEGOTIATIONS—A CROSS-CULTURAL PERSPECTIVE 209-228 (1979).

4. *See, e.g.*, Abrahams, *Mediation: The New Move Towards Justice with Judges*, 65 JUDICATURE 493 (1982); ABA LEGISLATION ON DISPUTE RESOLUTION, MONOGRAPH SERIES NO. 2 (1984).

tor—because the dispute's resolution turns on how well he or she fulfills the role.[5] Specifically, an exploration of mediator role expectations in relation to their professional training[6] may provide a useful supplement to our conventional perspectives on mediation[7] and the mediator's role.[8] The exploration may illuminate some of the conditions for effective use of alternative dispute resolution mechanisms. [9] It may also provide an opportunity to speculate on the potentially influential position of education and training in effective problem-solving.[10]

The mediation process seeks to emphasize open communication between the parties, informality, consensus, and getting to the dispute's underlying causes.[11] It also provides the context for the mediator role—usually described in terms of clarifying issues, summarizing points of disagreement, identifying and explaining legal terms, and generating problem-solving options.[12] The person responsible for translating the rhetoric into reality plays an important role. Against this background, therefore, the exploration of mediator role expectations sheds additional light on the process by which the promise of mediation is accomplished; how it can, in Fuller's words, "reorient the parties towards each other . . . by helping them achieve a new and shared perception of their relationship, a perception that will direct their attention toward each other."[13]

Thus, this study explores the following questions within the context of landlord-tenant disputes: What are mediator role expectations? Do these vary depending on the mediator's professional training? What are the implications for the teaching of disputes resolution?

II. PHILADELPHIA LANDLORD-TENANT MEDIATION PROGRAM

Philadelphia's rental housing problems, spurred by escalating home ownership costs, declining rental housing stock, abandonment in the face of declin-

---

5. *See* Moore, *Training Mediators for Family Dispute Resolution*, 2 MEDIATION Q. 79 (1983).

6. The study is limited to the professional training of the mediators in Philadelphia's landlord-tenant mediation program: law or social work.

7. *See, e.g.*, Danzig & Lowy, *Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner*, 9 LAW & SOC'Y REV. 675 (1975); Mnookin & Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

8. *See generally* M. DEUTSCH, THE RESOLUTION OF CONFLICT (1973).

9. *See, e.g.*, Blades, *Mediation: An Old Art Revisited*, 3 MEDIATION Q. 59 (1984); Markowitz & Engram, *Mediation in Labor Disputes and Divorces: A Comparative Analysis*, 2 MEDIATION Q. 67 (1983).

10. *See, e.g.*, G. BELLOW & B. MOULTON, THE LAWYERING PROCESS (1978).

11. *See* Fuller, *Mediation—Its Forms and Functions*, 44 S. CAL. L. REV. 305, 308 (1971).

12. *See generally* Mnookin & Kornhauser, *supra* note 7.

13. *See* Fuller, *supra* note 11.

ing profitability, and stock deterioration, have given rise to an escalating number of landlord-tenant disputes. Since 1981, disputants can have their claims handled by the Landlord-Tenant Mediation Program, an adjunct to the Landlord-Tenant Court (also referred to as the Housing Court) of Philadelphia Municipal Court. It is the lowest formal level for dispute processing, and has jurisdiction over actions for recovery of possession for non-payment of rent, for breaches of the rental lease agreement, for lease termination, and recovery of rent by assumpsit (where the landlord seeks back rent only, and not possession). It emerged in 1981 in response to the summary treatment tenants received under the traditional municipal court structure.

The Landlord-Tenant Court was conceptualized as a specialized court, modeled after similar housing courts in Boston, New York and Hartford.[14] Proponents anticipated it would consistently apply Pennsylvania's landlord-tenant law—an expectation that, to that time, had gone largely unfulfilled. Housing court advocates also hoped the new court would result in the installation of a permanent judge, but this feature was not incorporated; consequently, judges rotate through the court on a weekly basis. The net effect: the court is specialized; the judges are not—although the rotation scheme provides the expectation they will deal with a particular body of substantive law for a specified bloc of time.

The mediation program's establishment coincided with the Landlord-Tenant Court's creation in 1981. The program's original mediators were law students, trained by a Deputy City Solicitor instrumental in creating the court. The mediator pool has since expanded, however, to include a large number of graduate social work students; enough so that the most recent crop of volunteer mediators includes an equal number of students from both disciplines. All mediators are expected to participate in a training program that covers the substantive law, techniques for problem-solving involving a third-party neutral, and a theoretical overview that explores the stages in which the mediation process unfolds.[15] All are certified by the court upon completion of the training and a specified number of hours as mediator. All mediators are currently trained and supervised by the program's coordinator, who is directly responsible to the Director of the Municipal Court's Dispute Resolution Program.

---

14. The New York and Hartford programs are among many that have emerged in the past decade. They all seek to use a specialized court to streamline the handling of landlord-tenant disputes. *See generally Symposium Issue on Housing Courts and Housing Justice*, 17 URB. L. ANN. (1979).

15. The training program unfolds over ten weeks. The trainees meet weekly to discuss Pennsylvania landlord-tenant law and its application to the disputes they'll encounter. Following the initial training in the law, they learn about the mediation process generally and specifically within the context of the landlord-tenant conflict they'll help resolve. This latter training component relies heavily on role-playing, critical review of videotaped mock disputes, analysis of a film that depicts the conditions under which third-party intervention is most effective, and several brief written assignments.

The process by which disputing parties elect to mediate their dispute is rather straightforward. Prior to the reading of the Housing Court's daily list, the trial commissioner informs all parties in the courtroom they have three options for settling their dispute: (1) to have their case heard by the judge, (2) to try to settle on their own (this usually involves a corridor conference); or (3) to devise their own agreement, with the mediator's assistance. At this point, the commissioner stresses that their decision to negotiate among themselves or to mediate is voluntary, and they retain their right to have the judge hear their case. They are also informed, however, that once they reach a signed agreement, it is binding and, unlike the judge's decision, may not be appealed.

Upon electing to mediate their cases, the parties are escorted to a room designated for mediation. The mediator convenes the session by reenforcing the trial commissioner's earlier remarks and reviews some elementary "ground rules" for conducting the session (such as reassuring the parties that each will have an opportunity to tell their side of the story). The sessions vary in length and in the amount of give-and-take between disputants. Most sessions involve face-to-face dialogue between the parties, although there are instances where the mediator will privately caucus with each party prior to bringing them together to talk with each other. Needless to say, the sessions are structured as non-confrontative encounters; it is expected that the discussions can lead to disagreement without disintegrating into combat.

If the parties reach an agreement, the mediator will write out the terms and have them sign it. The agreement is reviewed by either the trial commissioner or by the judge, who questions the parties to ensure they understand the agreement and its ramifications. If no problem arises, the settlement becomes the court's judgment.

III. Research Design and Method

The study design is essentially exploratory—it seeks to discover whether there are mediator role expectations and whether these differ depending on professional training. Its anticipated results will have implications for the teaching of disputes resolution, particularly for the two disciplines represented in the mediator pool under investigation: law and social work.[16] For our purposes, "mediator role expectations" is defined as the set of expectations about the parties' views on mediation and about the mediator role that the mediator brings to the mediation.[17] For example, does the mediator expect that the par-

16. The limited pool notwithstanding, the findings underscore the interdisciplinary aspects of landlord-tenant problems and these point to curriculum content that would be relevant for both disciplines.

17. The definition is operational and is cast in very practical terms. It best represents the notion that mediators have some idea—however undefined—about the nature of conflict and ways of settling it that shapes the way they approach their task. The definition also implies that the mediators' conception of the dispute-resolution process will say a lot about how they view their role and the parties'. It was developed

ties approach mediation seeking to devise their own agreement terms? Does the mediator expect the parties to assume that he will supply the solution? Does the mediator expect that the parties elect mediation because they believe it will solve the "real" problem underlying their legal conflict? The study does not, however, deal with related phenomena, such as the mediator's impact on the parties or on the ultimate outcome. These issues, albeit interesting, were beyond this study's scope and best left for future research.

The study included all mediators trained between October, 1982 and December, 1983; of the 49 total, 39 responded to the survey. All mediators were trained as lawyers or as social workers. A questionnaire was used to collect the data. Almost all of the questions asked the respondent to select the most appropriate response from a given selection of possibilities; the remainder were open-ended. It sought information in several categories: (1) mediator role expectations; (2) techniques for and obstacles to impartiality; (3) educational content needed to fulfill the mediator role; and (4) aspects of mediator conduct, such as their reactions to attempted manipulation.

IV. DISCUSSION

The presentation is divided into two sections. First, a description is provided of frequencies on selected variables according to the two types of professional training (lawyer versus non-lawyer). Second, an explanation of paired variables is offered to determine the extent to which they are associated.[18]

A. *Distributions on Single Variables*

1. Mediator Expectations

The respondents were asked to specify their expectations concerning the parties' dispositions toward mediation or the mediator. They were asked whether they, as mediators, would expect the parties to: want to devise their own settlement terms; rely exclusively on the mediator's judgment rather than their own; expect mediation to solve the "real" problem underlying the legal dispute; assume that mediation would naturally lead to settlement; or anticipate that a mediated settlement would be more favorable than the judge's decision. Additionally, they were queried about their role expectations, i.e., what they expected to be able to accomplish in the mediator role. These ques-

---

from the author's observations and experiences, as well as from the mediation literature. It does not, however, present "expectations" as that concept might be understood in the literature on attribution theory.

18. Essentially, a measure of asociation desribes the strength of the relationship between two variables. The concern is the extent that characteristics of one sort and characteristics of another sort occur together, given the cases selected for study. Given the nominal vairables and non-random pool in the study, Phi and Cramer's V were used to measure the strength of the relationship between selected paired variables.

tions focused on expectations about whether the disputing parties should accept automatically the mediator's recommendations, or whether the mediator could equalize the landlord-tenant power imbalance.

As Table 1 illustrates, both groups were in substantial agreement regarding their expectations about the parties' disposition toward the agreement terms, the mediator's role, and reliance on the mediator to solve the "real" problem or as a way to ensure a settlement. There was also no difference between the groups in terms of whether the mediator expected to direct the discussion when one side was in jeopardy of being taken advantage of by the other. Differences did emerge, however, regarding the perceptions of three variables: the parties electing mediation to obtain a more favorable decision; the mediator's superior knowledge of the law; and the mediator's ability to correct the power imbalance between landlord and tenant.

TABLE 1: Mediator Expectations

	mediator expects parties use mediation to share in developing terms		mediator expects parties use mediation to have mediator supply solution		mediator expects parties to use mediation to solve underlying problem		mediator expects parties use mediation because it will naturally lead to settlement*	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	8	11	9	7	10	12	7	9
DISAGREE	3	5	4	5	4	3	2	8
NEUTRAL	6	3	5	7	4	5	9	2
	17	19	18	19	18	20	18	19

	mediator expects parties use mediation to get better result**		mediator expects to direct discussion when one side is disadvantaged		mediator expects their recommendations to be accepted due to superior legal knowledge		mediator expects to equalize landlord-tenant power imbalance***	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	18	14	16	15	4	10	8	15
DISAGREE	—	3	—	1	5	3	3	—
NEUTRAL	—	2	3	3	10	7	8	4
	18	19	19	19	19	20	19	19

* In the 3x2 table with these variables, Cramers V=.48
** In the 3x2 table with these variables, Cramers V=.38
*** In the 3x2 table with these variables, Cramers V=.41

2. Techniques For and Obstacles to Impartiality

To uncover key role characteristics,[19] the respondents were asked their views on various methods for communicating impartiality, as well as the conditions that undermine their efforts. The "techniques" for conveying impartiality included listening, showing concern, explaining the law, exploring or suggesting options for problem-solving, reinforcing the purpose of mediation and the me-

19. These characteristics, collectively, describe the effective mediator and the tactics and "tools" he or she brings to the dispute resolution process.

diator, and communicating to the parties that *they* must ultimately decide.[20] So-called anti-impartiality conditions, on the other hand, prevailed when any of the parties were unreasonable or antagonistic, manipulative, deceptive, or seemed, in the mediator's view, to benefit from an apparently favorable interpretation of the law.

With regard to conveying impartiality, Table 2 illustrates that the non-lawyer group more frequently relied on the "technique" of allowing the parties to devise their settlement terms. This does not imply either group ordinarily does otherwise. Rather, it suggests the mediator must assume a "critical distance" from the parties, in order to communicate that the parties alone exclusively control the settlement terms.

Table 3 on the other hand, depicts the array of conditions that undermine mediator objectivity. Here, the two groups exhibited some interesting differences. For example, non-lawyer mediators identified a greater number of situations that would test their impartiality, such as those involving antagonistic, manipulative, or deceptive parties.

TABLE 2: Techniques for Communicating Impartiality

	listening		showing concern		explaining law		generating options	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	18	20	16	20	19	17	18	19
DISAGREE	—	—	1	—	—	2	1	1
NEUTRAL	—	—	—	—	—	—	—	—
	—	—	—	—	—	—	—	—
	18	20	17	20	19	19	19	20

	explaining mediator role		stressing mediator neutrality		explaining purpose of mediation		letting parties decide*	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	18	18	18	17	17	19	15	19
DISAGREE	1	1	1	2	2	1	4	1
NEUTRAL	—	—	—	—	—	—	—	—
	—	—	—	—	—	—	—	—
	19	19	19	19	19	20	19	20

* In the 3x2 table with these variables, Cramers V=.38

20. The use of the techniques also affect the parties' views regarding the mediation process and whether they'll use it again to settle a similar conflict. In a related study, for example, the author's analysis of randomly-selected cases revealed associations between mediator characteristics—such as listening, helping parties identify differences, etc.—and the parties' perception that they had been treated fairly. *See* R. Albert, User Satisfaction and Mediator Performance in the Philadelphia Landlord-Tenant Program: A Preliminary Examination, Philadelphia Municipal Court (1983) (unpublished report).

TABLE 3: Obstacles to Impartiality

	unreasonable or uncooperative parties		one side may be at disadvantage		antagonistic parties**		manipulative parties***	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	9	12	9	12	3	11	9	12
DISAGREE	3	3	7	4	7	4	5	1
NEUTRAL	7	5	3	4	9	5	5	6
	19	20	19	20	19	20	19	19

	parties lie		one side appears to have favorable law	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
AGREE	6	11	5	8
DISAGREE	7	5	4	5
NEUTRAL	5	4	9	5
	18	20	18	18

** In the 3x2 table with these variables, Cramers =.41

*** In the 3x2 table with these variables, Cramers =.45

3. Educational Preparation

Regarding their educational foundation, although both groups expressed readiness, as Table 4 shows, the non-lawyer mediators more frequently stated that their education had prepared them to assume the mediator role. This may be traced, perhaps, to unique aspects of their curriculum. Additionally, as Table 5 shows, the non-lawyer group was more likely to be exposed to educational content that stressed mutual problem-solving, interpersonal skills and dynamics, and interviewing techniques. Perhaps the Table 6 group responses concerning their most significant, mediation-relevant educational content are most important. These collective results point to curricular and training implications.

TABLE 4: Competence in Mediator Role Following from Educational Preparation

	LEGAL	NOT-LEGAL
AGREE	12	17
DISAGREE	3	1
NEUTRAL	3	1
	18	19

TABLE 5: Content of Mediator Education

	mediation theory		problem-solving based on mutual interests		conflict theory		interpersonal dynamics*	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL
YES	11	13	14	18	13	16	7	17
NO	6	6	3	2	4	4	9	2
	17	19	17	20	17	20	16	19

	alternative dispute resolution		legal analysis		interviewing skills	
	LEGAL	NOT-LEGAL	LEGAL	NOT-LEGAL	LEGAL	NON-LEGAL
YES	11	15	17	14	14	20
NO	6	5	—	6	3	—
	17	20	17	20	17	20

TABLE 6: Mediator's Most Significant Educational Content**

	LEGAL	NOT-LEGAL
LAW-RELATED (legal analysis, legal research, etc.)	15	1
NON LAW-RELATED (conflict resolution theory, interviewing skills, problem-solving, counseling, etc.)	1	12
COMBINATION OF BOTH	1	4
	17	17

* In the 2x2 table with these variables, phi=.49
** In the 3x2 table with these variables, Cramers V=.82

B. *Association on Selected Paired Variables*

Cross-tabulation of variables dealing with the categories of professional training, mediator expectations, and mediator conduct were performed to uncover associations among them. The professional training variable represents legal versus non-legal groups. The mediator expectation variables are described, essentially, in Section One above. The variables pertaining to mediator conduct included: responses to manipulation by the parties; their views on the means by which they would steer the outcome if they were inclined to do so; and their strategies for self-regulation to ensusre impartiality. Mediator conduct was the dependent variable; mediator expectations, the independent variable. Given the nominal categories and the small N, phi was used to calculate the strength of the association.

As Table 7 illustrates, the strongest associations (phi greater than .40) occurred when the mediator conduct variable dealing with the mediator's response to manipulation was compared with two mediator-expectations variables: whether the parties expected mediation to lead naturally to agreement and the parties' assumption that mediation solves the "real" problem. These associations suggest the mediator's response to manipulation by the parties is related to his or her expectations about the primacy of the parties' role in

dispute resolution. These cross-tabulations thus underscore the mediator's role in helping the parties retain control over the decision-making process in THEIR dispute—sometimes despite the parties' efforts to the contrary.

TABLE 7: Crosstabulation of Mediator Conduct and Expectations

mediator responses to manipulation by parties:	mediator expects parties use mediation to solve underlying problem*		mediator expects parties use mediation to lead naturally to settlement	
	AGREE	DISAGREE	AGREE	DISAGREE
	(N=25)		(N=22)	
(1) reprimand parties (e.g., scold or otherwise convey to parties that their conduct is inappropriate)	1	3	0	3
(2) reinforce objectivity of mediator role (e.g., resist maniuplation, or restate to parties the purpose of mediation; namely, to reach a *mutually* satisfactory settlement)	18	3	13	6

* In the 2x2 table with these variables, phi=.52
** In the 2x2 table with these variables, phi=.47

But when an additional variable (professional training, stated in terms of legal or non-legal) is added to the 2 x 2 cross-tabulations depicted in Table 7, the interrelations provide an interesting picture. Thus, by controlling for the professional training variable, we get a refined grasp of the original relationship between mediator expectations and conduct; one that readily illuminates the association between all three variables. By controlling for professional training, the differences between the two emerge, as well as the relative impact of each on mediator conduct. The contrasting phi scores are provided to offer a comparative basis for evaluating the associations. Given these results, no conclusions can be drawn regarding the relative importance of professional training; notwithstanding, they do suggest the importance of professional training, per se.

TABLE 8: Crosstabulation of Mediator Conduct and Expectations Controlling for Mediator Training

mediator responses to manipulation by parties:	mediator expects parties use mediation to share in development terms*		mediator expects parties use mediation to have mediator supply solution**		mediator expects parties use mediation to solve underlying problem***	
	AGREE	DISAGREE	AGREE	DISAGREE	AGREE	DISAGREE
	(N=10)		(N=10)		(N=15)	
(1) reprimand parties (e.g., scold or otherwise convey to parties that their conduct is inappropriate)	0	1	2	0	0	2
(2) reinforce objectivity of mediator role (e.g., resist manipulation, or restate to parties the purpose of mediation; namely, to reach a *mutually* satisfactory settlement)	7	2	4	4	11	2

mediator responses to manipulation by parties:	mediator expects parties use mediation because it will lead naturally to settlement****		mediator expects parties use mediation to get a better result*****	
	AGREE	DISAGREE	AGREE	DISAGREE
	(N=10)		(N=15)	
(1) reprimand parties (e.g., scold or otherwise convey to parties that their conduct is inappropriate)	0	1	1	1
(2) reinforce objectivity of mediator role (e.g., resist manipulation, or restate to parties the purpose of mediation; namely, to reach a *mutually* satisfactory settlement)	8	1	12	1

* In the 2x2 tables with value=legal, phi=.50 (versus phi=.28 when value=not legal)
** In the 2x2 tables with value=legal, phi=.41 (versus phi=.28 when value=not legal)
*** In the 2x2 tables with value not legal, phi=.65 (versus phi=.38 when value=legal)
**** In the 2x2 tables with value=not legal, phi=.67 (versus phi=.38 when value=legal)
***** In the 2x2 tables with value=not legal, phi=.42 (no statistics computed for value=legal)

V. CONCLUSION

The findings suggest that both professional groups approach mediation with similar expectations about their role and the disputing parties. This shared understanding apparently stems from common views of the mediation process in general and of the Philadelphia program's particular purpose. Each group conceptualized their role as a neutral, third-party to the dispute who facilitates problem-solving without substituting their judgement for that of the parties.[21] Further, the mediators in each group appear to have defined their

21. This is the predominant conception as expressed in the study and in the mediators' remarks with the author. Presumably, their performance matched their responses. A more accurate assessment can only be obtained by observing real-life mediation sessions, and this study was not so designed. For a description of a study based on actual observations of mediation sessions, see Merry, *Dispute Resolution Ideologies: Confrontation and Consensus,* in ANTHROPOLOGY AND LAW (M. Lowy ed. forthcoming).

competency in terms of the extent to which they could help the parties assume control of their decision-making process.[22]

There are differences, however, that can be traced to aspects of their professional training. On the one hand, the lawyer group, while more competent in the legal aspects, recognized the importance of non-legal skills to the mediation's outcome. Similarly, the non-lawyer group, while predisposed to mediation's non-legal features, saw law-related knowledge as an essential supplement. On the other hand, however, a possible contradiction surfaces when we look at the findings regarding the mediators' most significant mediation-related educational content. The lawyers stressed legal knowledge and skills; the social workers, non-legal content such as conflict resolution theory, interviewing, and problem-solving. This finding is particularly telling when assessed in light of the fact that *each* group was exposed to both legal and non-legal content in their education.[23] Thus, each group's selection of the most significant educational content may expose not only their perception of mediation but also their education's impact on the shaping of that perception.[24] And to the extent this is true, we may see further effects on user satisfaction [25] (i.e. whether the parties will conclude they were treated fairly and would use mediation again).

Overall, the shared expectations appear to overshadow those on which the two groups diverge. In other words, the differences that surfaced may be traced to their training, but this may come as no surprise—lawyers are not trained to be social workers and vice versa. Part of the explanation may be found in each program's unique educational prerequisites. Their conceptualization of the mediator's role in relation to the landlord-tenant problems they confronted may supply the remaining part of the explanation: they appear to recognize the *interdisciplinary* dimensions of these types of problems and, consequently, appreciate the importance of an interdisciplinary knowledge base to support the role. This particular conclusion underscores several critical points about the mediators in this study:

—They deal with complicated problems and their approach reflects this complexity.

—They help the parties solve their legal problems and their non-legal issues, as well.

—They are confronted with problems that have both legal and non-legal or social dimensions, and their problem-framing and problem-solving is built

22. This was an underlying value of the program. The Mediation Program Coordinator, Brigid Lawlor, M.L.S.P., and the Director of Philadelphia's Dispute Resolution Program, Fran Thea Snyder, strongly advocate the parties' participation in dispute settlement. Not surprisingly, this ethic is incorporated into the training program content and, ultimately, into the mediator's conception of successful mediation.

23. *See* Tables 5 and 6.

24. It may also say something about the tactics each will use. *See* Merry, *supra* note 21.

25. *See* Albert, *supra* note 20.

around a socio-legal approach.

—They are expected to be aware of the parties' interpersonal dynamics and to respond to the consequences that undermine the parties' ability to communicate and to develop their settlement terms.

—They occasionally work under conditions that test their impartiality, their self-restraint, and their capacity for critical self-reflection.

—They supplement their professional training by drawing on related disciplines—the social workers need to know about the law and civil process; the lawyers, interviewing and interpersonal processes and intervention techniques—and then use this interdisciplinary base to inform their mediator conduct.

As these two groups demonstrate, mediators have certain preconceptions about disputes which influence how they see their role. Given the two groups under study, we might have expected the educational biases to predominant: the social workers to stress consensus, the lawyers, combat based on rigid interpretations of legal rights. But the results suggest that both groups envision their role in similar ways, primarily because they share a common orientation to the problems they face. The nature of landlord-tenant conflict, albeit based on a claim that a legal duty has been breached, allowed each group to expect the parties wanted to overcome their misunderstandings to arrive at a mutually satisfactory result, rather than engage in a struggle over competing legal interests. This expectation, in turn, influenced the mediators' conception of their role.

VI. Overview of Curriculum Implications

The study's curricular implications are built around a recognition that complicated problems dictate similarly complicated responses: a legal problem that unfolds within the context of a social relationship requires a practitioner trained to appreciate and respond to these socio-legal dimensions. Educational preparation for addressing the conceptual and practical aspects of dispute resolution, then, should emphasize three key themes: (1) the relationship between practitioner expectations and his conduct; (2) the essential role characteristics; and (3) the relation of theory to practice. Each of these will be discussed briefly below.

A. *Practitioner Expectations and Conduct*

Students must appreciate that they should uncover their assumptions about the parties and the dispute resolution process to expose biases or misconceptions that could undermine their impartiality. They bring to the situation certain orientations about their role, the parties, the process, and the nature of conflict, which, left unexamined, could produce unfair results.

The self-scrutiny is a mechanism to alert practitioners when they are likely to usurp the parties' decision-making authority. This monitoring is im-

portant not only to avoid contaminating the problem-solving process but also to forestall the parties deference to (presumed) practitioner expertise. The latter situation results when the parties, overwhelmed by the court and its trappings, give too much weight to the practitioner's suggestions.

B. *Essential Role Characteristics*

That dispute resolution practitioners should be impartial is no surprise. The behaviors that convey impartiality, as gleaned from the study, correspond with the use of certain techniques or tactics that emphasize their neutral role. Education and training should be organized to address these role requirements.

On one level, the role characteristics can be expressed in terms of behaviors the practitioner should demonstrate. These include the ability to: listen attentively to the parties and their statements of their troubles; convey concern for each side's perspective; explain fully and clearly the law and its implications for the situation; generate problem-solving options the parties may have overlooked; reiterate the neutrality of the practitioner's role, as well as the overall purpose of dispute resolution; and assume a sufficient distance from the parties' problem-solving process to ensure they feel THEY are in control of the decision-making. Essentially, practitioners use these techniques to delimit the scope of their role.

On another level, the role characteristics heighten the practitioners' awareness of conditions that threaten their ability to remain impartial. As gleaned from the study, these include: unreasonable or antagonistic disputants (its difficult to avoid condemning their conduct and, by implication, their position); the suspicion that one side has greater resources or that the law favors one side (the temptation to "correct" the perceived imbalance may be irresistible); and parties that appear to by lying (it's an easy conclusion to draw in a heated exchange and to seduce the practitioner into acting like a judge or arbitrator).

C. *The Integration of Theory with Practice*

Mediation theory, per se, is a goal toward which some scholars are working.[26] Though theory and research for negotiation is extensive,[27] a coherent theory of mediation must still be constructed from relevant theories from diverse fields, including game and negotiation theories, and from empirical research on mediation.

Notwithstanding, educational content for various dispute resolution roles

---

26. *See, e.g.*, Wall, *Mediation: An Analysis, Review and Proposed Research*, 25 J. OF CONFLICT RESOLUTION 157 (1981).

27. *See* Weiss-Wik, *Enhancing Negotiators' Successfulness: Self-Help Books and Related Empirical Research*, 27 J. OF CONFLICT RESOLUTION 706 (1983).

should expose students to a range of theoretical perspectives on conflict resolution (e.g., game theory,[28] negotiation theory,[29] and theory of small groups[30]) to explore their applicability and to uncover their implications for shaping practitioner conduct. The array of perspectives also would reinforce the complicated nature of dispute resolution by underscoring the similarly complicated interpersonal interaction that precedes conflict resolution. Supplemental interviewing content could support theory examination by providing valuable skill development in the art of fact-gathering.[31]

Finally, special attention should be given to the multiple functions society asks law to perform. The law's dispute resolution structure influences and is influenced by societal expectations.[32] This interdependence shapes our reliance on both formal and informal mechanisms, and places dispute resolution within the context of larger social processes. The insight gained from this examination of the law's social functions would also enhance the student's ability to asses the competency of informal dispute resolution structures and to evaluate attempts to expand their applications to emerging social problems.[33]

The structure for presenting this content can vary, so no attempt will be made here to propose an ideal model.[34] Course content—the themes, principles, and issues explored—is the guiding force for course structure and it should inform the selection of specific activities. Teaching methods, obviously, should be varied to and include opportunities for active integration of theory and practice through role-playing, problem-solving, peer review of videotaped mock sessions, and written assignments. These pedagogical exercises, however, will be no better than the overall content that defines their scope.

---

28. *See generally* Nash, *The Bargaining Problem,* 18 ECONOMETRICA 155 (1950).

29. *See, e.g.*, R. FISHER & W. URY, GETTING TO YES (1981); Weiss-Wik, *supra* note 27

30. *See generally* G. HOMANS, SOCIAL BEHAVIOR (1974).

31. The fact-gathering process, here, would be more open-ended than usual. It must simultaneously accommodate mediation's informality and reinforce the parties' participation, yet obtain the information needed to make a judgment on the strictly legal aspects of the problem.

32. *See generally* I. JENKINS, SOCIAL ORDER AND THE LIMITS OF LAW (1980).

33. *See*, Abel, *supra* note 1, at 267-310.

34. For an example of a thoughtfully structured course outline see Moberly, *A Pedagogy for Negotiation*, 34 J. LEGAL EDUC. 315, 317-320 (1984). Also, the author has taught a course on advocacy and negotiation techniques (including mediation processes and tactics), which stresses the interdisciplinary aspects of these techniques. Copies of the course outline are available upon request.